# SUPREME COURT

—OF THE—

# UNITED STATES.

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## OCTOBER TERM 1899.

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NO. 105.

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C. P. Huntington, as Special Receiver of the Central Land Company of West Virginia, Appellant,

vs.

John B. Laidley, W. S. Laidley, Thos. J. Bryan, et al., Appellees.

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On appeal from a Decree of the Circuit court of the United States for the District of West Virginia.

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## BRIEF FOR APPELLEES.

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The final decree rendered by the Circuit court of the United States for the District of West Virginia, from which this appeal is taken, is found on pages 647 and 648 of the

printed record, and after reciting the various pleadings that has been filed, the court says:

> "And it appearing from such examination to the satisfaction of this court, upon consideration thereof, that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, because of the pendency in the State court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff, and The Central Land Company of West Virginia was defendant, which was begun in the Circuit court of Cabell county, West Virginia, on the first Monday of April, 1882, and of the other actions of ejectment brought in said State court by the said John B. Laidley as plaintiff, and in relation to the property in question in this suit, and of the chancery cause in said State court, in which the Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which was brought in said State court prior to the commencement of this cause, and this court being therefore, for the aforesaid reason, of the opinion that it is required to dismiss this suit by the 5th Section of the Act of Congress approved March 3rd, 1875, and entitled, —"An Act to Determine the Jurisdiction of the Circuit courts of the United States, and to regulate the Removal of Causes from State courts, and for other Purposes;" it is now, therefore, of this court's own motion, adjudged and decreed that this suit and the bills and amended bills therein be, and they are, hereby dismissed and stricken from the docket of this court, without costs."

The foregoing action of the court in dismissing the appellant's bills and amended bills is based as recited therein, upon Section 5, of an Act of Congress approved March 3rd, 1875. That section reads as follows:

"That if in any suit commenced in the Circuit court, or removed from a State court to the Circuit court of the United States, it shall appear to the satisfaction of said Circuit court, at any time after such suit has been brought or removed thereto, that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit court, or that the parties to the said suit have been improperly or collusively made or joined, either as plaintiff or defendant for the purpose of creating a case cognizable and removable under this act, the said Circuit court shall proceed no further therein, but shall dismiss the suit, or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

The facts upon which the Circuit court based the foregoing decree dismissing the appellant's bill and amended bills may be stated as follows:

On the 25th day of February, 1870, S. H. G. Pennybacker and her husband John M. Pennybacker, attempted to convey to C. P. Huntington the title to 240 acres of land in Cabell county, West Virginia, and on October 16, 1871, C. P. Huntington and wife, by deed, attempted to convey the same title to The Central Land Company of West Virginia. John M. Pennybacker, the husband of S. H. G. Pennybacker, died on May 5th, 1881; and on January 26th, 1882, the widow, S. H. G. Pennybaker, conveyed to John B. Laidley, title to the same 240 acres of land mentioned and described in the deed from C. P. Huntington and wife to The Central Land Company of West Virginia.

In April, 1882, Laidley instituted in the Circuit court of Cabell county, West Virginia, an action of ejectment to try

the question of title as well as the right of possession of the land, against The Central Land Company of West Virginia.

This suit was prosecuted in the Circuit court of Cabell county to a trial which was had on December 22d, 1884 when a judgment was rendered for the defendant by the Circuit court on that date. Laidley at once sued out of the Supreme court of Appeals of West Virginia, a writ of error, and said Supreme court on November 26th, 1887, reversed the judgment of the Circuit court in favor of the defendant, and remanded the case for a new trial. The report of this case is found under the title of Laidley vs. The Central Land Company, in 30th West Virginia Report, page 505

By an agreement, the case was then removed to the Circuit court of Summers county, West Virginia, on January 16th, 1888. In June, 1887, the Central Land Company of West Virginia brought its suit in chancery, in the Circuit court of Cabell county, against John B. Laidley, in which, among other things, it sought to set aside the deed made by S. H. G. Pennybacker to John B. Laidley, as a cloud upon its title And the action of ejectment that had been originally brought by Laidley in 1882, was suspended by the following agreement entered of record by the Circuit court of Summers county, in the action of ejectment wherein Laidley was plaintiff and the Central Land Company of West Virginia was defendant, which agreement is in the following words:

> "This day came the plaintiff by his attorneys, and the defendant by its attorneys; and thereupon the defendant moved the court for a stay of proceedings in these causes until the decision of the Supreme court on the appeal hereinafter mentioned, upon the

ground that there is pending in the Supreme court of Appeals of this State, an appeal by the defendant from a decree of this court in the chancery cause of the Central Land Company of West Virginia against said John B. Laidley and others, and read in evidence in support of said motion the record of said chancery suit and of the appeal thereon; and the plaintiff resisted said motion and insisted upon a trial of said action of ejectment. And the court, having fully considered the matters arising upon said motion, doth decide to stay said actions until the decision of the appellate court in said chancery cause upon condition and not otherwise, that said defendant, the Central Land Company of West Virginia agrees here in open court that judgment be at once entered for the plaintiff in said actions of ejectment, for the estate in fee simple in the lands in the declarations in said actions described, without further defense, in the event the decree aforesaid in said chancery suit be affirmed upon said appeal so far as it relates to the title to the land, but judgment so to be entered to be without prejudice to the right of the defendant, if any it has, to compensation for any improvements it may have placed upon the land in controversy: And thereupon the said defendant in open court accepted said stay of proceedings in said actions of ejectment upon the terms aforesaid."—(See printed record, page 340.)

The foregoing was had and based upon Section 6, of Chapter 136, of the Code of West Virginia, at page 860 of the Code of 1891, which is as follows:

"Whenever it shall be made to appear to a Circuit court, or to a Judge thereof in vacation, that a stay of proceedings in a case therein pending should be had until the decision of some other action, suit or proceeding, in the same, or another court, such court or Judge shall make an order staying proceed-

> ings therein, upon such terms as may be prescribed in the order. But no application for such stay shall be entertained in vacation until reasonable notice thereof has been served upon the opposite party."

The trial of the action of ejectment instituted by said Laidley was by the foregoing order suspended until the chancery cause instituted by the Central Land Company of West Virginia against Laidley had been determined. This chancery cause had also been removed, by agreement, from the Circuit court of Cabell county to the Circuit court of Summers county, and a final decree was rendered by the court in that cause on May 14th, 1888, dismissing the plaintiff's bill, and from this decree of the Circuit court of Summers county dismissing the plaintiff's bill, an appeal and supersedeas was sued out of the Supreme court of the State, in August, 1888. The cause was elaborately argued in the Supreme court of the State, and the decree dismissing the bill was affirmed by that court. The report of the case is found under the title of The Central Land Company of West Virginia against John B. Laidley, et al., 32 West Virginia Report, 134.

After the Central Land Company of West Virginia had failed in the chancery proceedings to have Laidley's deed set aside, the trial of the action of ejectment which had been suspended by the agreement entered therein September 5th, 1888, was taken up and continued, after being remanded to the Cabell county Circuit court, in September, 1890. The Central Land Company of West Virginia refused to abide by said agreement and allow judgment to be given for the plaintiff Laidley in said actions of ejectment, as entered of record in said agreement, and a trial was had in the Circuit court of

Cabell county, which resulted in a verdict and judgment for the plaintiff Laidley for the title and possession in fee simple of the said tract of land, which judgment was rendered on the 12th day of September, 1890.

From this judgment, the defendant, The Central Land Company of West Virginia applied to the Supreme court of Appeals of West Virginia, on November 14th, 1890, for a writ of error, seeking a review of said judgment. The Supreme court of the State refused the application for the writ of error, and from that action of the Supreme court of the State, an application was made to the Supreme court of the United States for a writ of error, which was allowed on July 7th, 1891. The matter was brought on and heard in the Supreme court of the United States. On January 3rd, 1895, the writ of error was dismissed. This action of the last named court is reported under the title of Central Land Company against Laidley, 159 U. S., page 103.

On March 26th, 1891, a writ of possession was issued in the action of ejectment of Laidley against The Land Company, by the Circuit court of Cabell county, West Virginia.

In the meantime, to-wit: on November 11th, 1890, C. P. Huntington, I. E. Gates and others, filed their bill in equity against the Central Land Company of West Virginia, in the Circuit court of the United States, and F. B. Enslow was appointed as Special Receiver, and ordered to take possession of all the property of the Central Land Company, and especially the 240 acres, the subject matter of the Laidley litigation. On the 16th day of December, 1890, F. B. Enslow, Special Receiver, reported that on the day following his appointment as such, that he took possession of said property, and said

Enslow as special receiver was discharged, and C. P. Huntington was appointed permanent special receiver.

This was an EX PARTE proceeding, and Laidley was never made party thereto.

On the day of the filing of the bill of Huntington, Gates and others against the Central Land Company, another bill was filed in said court, upon which an injunction was granted enjoining Laidley from taking possession of the said tract of land, which suit was styled, The Central Land Company of West Virginia against John B. Laidley, filed in the Circuit court of the United States, November 11th, 1890.

After C. P. Huntington had been appointed Special Receiver in December, 1890, he filed another bill on February 28th, 1891, upon which Laidley was enjoined from taking possession of said land.

Prior to the institution of the action of ejectment by Laidley against the Land Company, in 1882, the Land Company had sold certain parcels of the land embraced within the 240 acre tract, to C. F. Remley, and sixteen others who had taken possession of the lots purchased by them, and had placed improvements thereon. On the 1st Monday of November, 1883, Laidley instituted his seperate actions of ejectment agains Remley, and sixteen others, in the Circuit court of Cabell county, West Virginia. The record of said proceedings is found at page 440, et seq. of the printed record in this case. These actions of ejectment against Remley and others were prosecuted by Laidley to final judgment on the 10th day of September, 1890. (See page 444, record.)

In said actions against said Remley and others, defend-

ants filed claims for improvements and upon the filing of said claims, Laidley elected to allow said claims for improvements, and took a judgment and order of sale against the property, for the value of the land recovered by him, instead of taking a judgment for its possession and the transfer of the title. This Laidley was entitled to do by sec. 10-13, Chap. 91, Code of W. Va.

Orders to sell in all of said cases were entered on the 15th day of December, 1890, and Messrs. John H. Holt and C. W. Campbell were appointed special commissioners to make said sales. (See p. 445, record.)

On the 21st day of October, 1897, the Circuit court of Cabell county substituted Wm. R. Thompson as special commissioner to make sale of said property, in lieu of John H. Holt and C. W. Campbell, and under an order entered that that day, the said commissioner advertised the lots for sale Before the date of said sale, C. P. Huntington, Special Receiver, moved the Circuit court of the United States for a rule against Laidley and said Thompson, special commissioner, and their counsel, Z. T. Vinson, to show cause why they should not be fined and imprisoned for contempt of the Circuit court of the United States, for proceeding to make sale of said lots in violation of the order of injunction entered in February, 1891, in the case of C. P. Huntington, Special Receiver, against John B. Laidley and others. To this rule said Laidley and Thompson filed their answers, and upon the hearing of the motion for the rule, the Circuit court of the United States dismissed the rule, and dismissed the bill and amended bills of C. P. Huntington, Special Receiver of the

Central Land Company, under the before mentioned Act of March 3rd, 1875.

The action of the court in this respect was based upon the fact that said Circuit court of the United States was without jurisdiction to enjoin the proceedings or the litigants in the State court, after the State court had once taken jurisdiction of the parties and subject matter of the litigation, prior to any proceeding by any of the parties in the Circuit court of the United States.

The Circuit courts held in each county of the State of West Virginia, are courts of general jurisdiction, and any judgment, order or decree entered therein, when the parties and the subject matter are properly before the court, is binding upon the parties and their privies in all courts, state and federal, in the United States.

Sec. 12, Art. 8, of the constitution of West Virginia, provides, 'that they (the circuit courts) shall, except in cases confined exclusively by this constitution to some other tribunal, have original and general jurisdiction of all matters at law where the amount in controversy, exclusive of interest, exceeds fifty dollars."

The conclusiveness of the action of ejectment has been defined by statute, in sec. 36, of chap. 90, of the Code of West Virginia, at p 703, of the Code of 1891, which section reads as follows:

> "Any such judgment in an action of ejectment shall be conclusive as to the right of possession established in such action, upon the party against whom it is rendered, and against all persons claiming from, through or under such party, by title accruing

after the commencement of such action, except as hereinafter mentioned."

The exception mentioned in this section applies to infants, married women, and insane persons, exclusively.

The question presented to this court for determination, by this record, is, how far will Circuit courts of the United States be permitted to enjoin and suspend litigation in State courts of concurrent jurisdiction, between the same parties, and affecting the same subject matter, when the State courts have obtained primary jurisdiction over both the parties and the subject matter?

This record shows that the litigation in the State court brought by Laidley against the Land Company, and by Laidley against Remley and others, had been prosecuted to final judgment and orders entered upon this judgment for possession of part of the property which was the subject matter of litigation, and decrees of sale for the other parts of the property involved in the actions of Laidley against Remley, and against each of the sixteen others, before any application whatever, by C. P. Huntington, either in his individual capacity, or as Special Receiver of the Central Land Company, had been made to the Circuit court of the United States.

The sole and exclusive purpose of the various bills in Equity filed in the Circuit court of the United States, by C. P. Huntington, as special receiver, and in his individual capacity, was to enjoin the execution of the judgments of the Circuit court of Cabell county, which had been rendered prior thereto in the action of ejectment of Laidley against the Central Land Company, and the actions of Laidley against Remley, and the others.

The power of the Federal court to enjoin proceedings in the State court is clearly defined by section 720 of the Revised Statutes of the United States, which section reads as follows:

> "The writ of injunction shall not be granted by any court of the United States, to stay proceedings in any court of a State, except in cases where said injunction may be authorized by any law relating to proceedings in bankruptcy."

Among the earlier cases decided by this court, construing this section, are,

Diggs vs. Wolcott, 4 Cr., 179.

Peck vs. Jenness, 7 How., 625.

Watson vs. Jones, 13 Wall., 719.

Haines et al. vs. Carpenter et al., 91 U S., 254.

Among the later cases may be cited,

Krippendorf vs. Hyde, 110 U S., 283.

Dial vs. Reynolds, 96 U. S. 340.

Adams vs. Merc. Tr. Co., and note, 15 Cir. Ct. App. p. 1.

Garner vs. First National Bank, and note, 16 Cir Ct. App., 86.

(See 2nd vol. Desty's Fed. Proc., Section 240, p. 802, 9th Ed.)

> "Prohibition extends to injunctions against proceedings to enforce a judgment obtained by a party in the State court."—Louisville T Co. vs. City of Cincinnati, 73 Fed Rep., 716.

> "Injunctions will be refused by the Federal court where a valid judgment has been obtained in the State court against a National Bank and the lien thereof is attached before the appointment of a Receiver."—Law vs. Ault, 78 Fed. Rep., 397.

See also, Southern Bank and T. Co. vs Fulsom, 75 Fed. Rep., 929.

Prohibition of the writ of injunction against State courts extends to all cases where such courts first get jurisdiction, and applies to the officers and parties of the courts, as well as to the courts themselves.

Wheeling vs. Wilders, 13 U S. App., 180, 54 Fed. Rep., 554.

> "The inhibition includes every process or order irrespective of its form, the office of which is to stay proceedings in the State court."—Ex parte Schulenburg, 25 Fed. Rep , 211.

> "They are not merely an inhibition against an injunction, but against preventing a party from conducting proceedings in a State court."—Fisk vs. U. P. Railroad Co., 6 Blatchford, 162.

> "The word proceedings includes all steps taken by the State court, or by its officers by virtue of its process from the commencement of a suit until the return of execution."—U. S. vs. Collins, 4 Blatch. 142.

> "The prohibition applies to injunctions issued to parties before the State courts."—Wagner vs Drake, 31 Fed. Rep., 851.
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> Peck vs. Jenness, 7 How., 625.
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> Slaughter House Cases, 10 Wall.
>
> Diggs vs. Wolcott, 4 Cr., 179.
>
> Haines vs. Carpenter, 91 U. S., 254.
>
> Dial vs. Reynolds, 96 U. S., 340.

> "Injunction will not be granted to prevent parties from taking possession of property in the custody of an officer of the State."—Watson vs. Jones, 13 Wall., 679, 719.

Mercantile Trust Co. vs. Lamoille Railroad Co. 16 Blatch., 324

"An injunction cannot issue to restrain a sale under an execution."—3 Biss., 325.
White vs. Crow, 17 Fed. Rep., 98.

The question of conflicts arising between courts of concurrent jurisdiction has arisen in many cases, and has been so frequently passed upon by this court, that we deem it unnecessary to do more than cite the decisions of this court to sustain the contention of appellees. From the cases that have arisen and been passed upon in these controversies between State and Federal courts, where each has claimed the right to adjudicate concerning the same parties and subject matter, we deduce the following proposition:

**The court that has first acquired jurisdiction of the action, of the parties, and subject matter of the controversy, retains it to the end of that controversy, to the exclusion of the process of all other courts of co-ordinate jurisdiction.**

Smith vs. McIver, 9 Wheat., 532.
Dietzsch vs Huidekoper, 130 U. S., 494.
French vs. Hay, 24 Wall., 253.
Haran vs. Lucas, 10 Pet. 400.
Buck vs. Colbath, 3 Wall., 334.
Riggs vs. Johnson, 6 Wall., 196.
Watson vs. Jones, 13 Wall., 679.
Covell vs. Heyman, 111 U. S., 176.
Heidritter vs. Oil Cloth Co., 112 U. S., 294.
Gumbel vs. Pitkin, 124 U. S., 131, 143.

Porter vs. Sabin, 149 U. S., 473

Moran vs. Sturgiss, 154 U. S., 256.

In re Chetwood, 165 U. S., 443, 460.

In re Johnson, 167 U. S., 120, 125.

Central National Bank vs. Stevens, 169 U. S., 432.

In the latter case, decided by this court in 1897, all the antecedent authorities were considered, and reviewed, and at page 459 of the report, the court deduces the following principle:

> " x x x the injunction was a plain interference with the proceedings in another court which had full and complete jurisdiction over the parties and the subject matter of the suit, and which jurisdiction had attached long before the suit in the Supreme court had been begun."

"It will suffice to cite a few of the cases:"

> "It is a doctrine of law too long established to require a citation of authorities, that where a court had jurisdiction, it has a right to decide every question which occurs in the case, and whether its decision be correct or otherwise, its judgment, until reversed is regarded as binding in every other court; and that where the jurisdiction of a court and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice. x x x x x The fact, therefore, that an injunction issues only to the parties before

the court and not to the court, is no evasion of the difficulties that are the necessary result of an attempt to exercise that power over a party who is a litigant in another and independent forum."—Peck vs. Jenness, per Mr. Justice Grier, 7 How., 612, 624.

"State courts are exempt from all interference by the Federal tribunals, but they are destitute of all power to restrain either the process or proceedings in the national courts Circuit courts and State courts act separately and independently of each other, and in their respective spheres of action the process issued by the one is as far beyond the reach of the other as if the line of division between them 'was traced by landmarks and monuments visible to the eye.' x x x x x x

"The exemption of the authority of the courts of the United States from interference by legislative or judicial action of the States is essential to their independence and efficiency." x x x

"It is contended by the counsel for the defendants in error, in a supplemental brief, that these principles, so long and so well settled, have been modified by some recent decisions of this court and the case of Moran vs. Sturges, 154 U. S., 256, and of Shields vs. Coleman, 157 U. S., 168, are cited in support of that contention. Such a conception of the import of those cases must have been formed from a hasty reading, for they are in perfect harmony with the previous cases, and indeed, may properly be cited to sustain the reasoning upon which those cases proceeded."

The court then proceeded to take up the case of Moran vs. Sturgiss, and the case of Shields vs. Coleman, and shows that they are in perfect harmony with the principles established in that and other cases, instead of establishing a new doctrine. These two cases have been relied upon by appellant's counsel in this case, for the purpose of establishing a

different doctrine, and one that is essential to their contention.

In this same case, Central National Bank vs. Stevens, at page 463, the point is there decided that disposes of the contention of appellant's counsel that A NEW FACT will give the Circuit court of the United States jurisdiction over the State court, where the parties and the subject matter are the same.

The court there says:

> "Nor are we able to acquiesce in the reasoning of the learned judge when he says that 'the setting aside of the judgment in the Sacket suit upon which the suit in the United States Circuit court was founded, for fraud, was A NEW FACT, occurring since the decree in the court, which gave jurisdiction in this action to enjoin proceedings thereon.' Doubtless there may be facts occurring after the rendition of a judgment which would render its enforcement inequitable; such, for instance, as payment, or a reversal thereof on appeal by a superior court. But surely a judgment and injunction rendered subsequently in another and independent forum cannot constitute such new facts unless we are prepared to concede that, as between two courts of concurrent jurisdiction, it is the judgment of the court whose jurisdiction is LAST invoked which shall be entitled to prevail."

It is contended in the appellant's bill that a new fact has been discovered which will give to the Circuit court jurisdiction to enjoin the proceedings in a State court, and that new fact was the allegation that Laidley was a clerk in his father's law office, and in that way became possessed of the knowledge of the defect in complainant's title. There is no allegation or pretense that there was any fraud practiced in procuring

the judgment rendered by the Circuit court of Cabell county in the action of ejectment which gave to Laidley the fee simple title to and the right of possession of, the property in controversy. Appellant's counsel takes the position that jurisdiction is dependent on the FIRST ACTUAL SEIZURE of the property by the State or Federal officer, acting under writs from their respective judicial tribunals. This proposition is not sustained by the authorities. On the other hand, the true rule is,

> "That actual seizure is not always necessary in order to give exclusive jurisdiction over property to a court in which a suit affecting such property is pending, if possession of such property is necessary in order to give the full relief sought in said suit." – Adams vs. Merc. Tr. Co., 15 Cir. Ct. App page 1.

The action of ejectment in the State of West Virginia, is brought for the purpose of trying the title to the property and also the right of possession. The property is not seized for the purpose of acquiring jurisdiction; the seizure is the final act and exercise of jurisdiction: And if seizure is the test, all previous steps in the action are without jurisdiction.

In proceedings IN REM the jurisdiction is acquired alone by seizure. This method of obtaining jurisdiction applies to maritime actions, and attachments

The fact that possession of the RES, is constructively in the court, control of the court, IN GREMIO LEGIS, the moment when the writ is legally served upon the defendant, has been many times decided, and is always acted upon when the court has jurisdiction of the parties, the LIS MOTA and the form of action.

In the case at bar, it appears there is no question that the Circuit court of Cabell county has jurisdiction to try the action of ejectment, to render judgment thereon, and to give force and effect to that judgment by means of a transfer of possession of the property from the defendant to the plaintiff, in execution of this judgment. The decree from which this appeal is taken says there can be no question of its having acquired such jurisdiction long prior to the institution of any suit or proceeding in the Circuit court of the United States.

In all cases affecting title to or possession of property, the court first acquiring the jurisdiction of the parties litigant has exclusive jurisdiction to the end of the controversy, and also the exclusive right to change the possession of the property affected by said proceeding. And actual seizure thereof is not necessary to the exercise of this jurisdiction.

This court, in the case of Moran vs. Sturgiss, reported in 154 U. S. at page 283, 284, says:

> "As between two courts of concurrent and coordinate jurisdiction, having like jurisdiction over the subject matter in controversy, the court which first obtains jurisdiction is entitled to retain it without interference, and cannot be deprived of its right to do so because it may not have first obtained physical possession of the property in dispute."

In Adams vs. Merc. Tr. Co., 15 Cir. Ct. App., at page 5, the court says:

> "Is actual seizure of the property necessary to the jurisdiction of the court? In my opinion, it is not. In this case I think the jurisdiction of the Uni-

ted States Circuit court for the District of Georgia, first attached to the property, because the suit in that court was first commenced, and service of subpœna made, and because (1) One of the main objects of the suit was to obtain possession of the property, and such possession was necessary to the full relief prayed by the bill.

(2) Because by the service of the restraining order enjoining the defendant company from delivering possession of the trust property to any person except a receiver appointed by this court in this cause, the court acquired constructive possession, and from the moment of the service of the restraining order, the property was in GREMIO LEGIS."—Citing Bridgeport Ice Co. vs. Meader, 18 Cir. Ct. App. 452, and Garner vs. 2nd National Bank, 16 Cir. Ct. App. 86.

"Where two suits, involving to a great extent the same subject matter, are brought respectively in a State and Federal court, that court whose process is first served obtains jurisdiction of all questions which legitimately flow out of the subject matter of the case."—1st Desty's Fed. Proc., Sec. 84, page 348, (9th Ed.), citing U. Mut. Life Insurance Co. vs. University of Chicago, 10 Biss. 191

As between Laidley and the Land Company, the judgment in the action of ejectment is conclusive upon Laidley's fee simple title to the land in controversy, and his right of possession thereof. Code of West Virginia, chap. 90, Sections 2-4-5-7-9-11-13-23-27-28-29-35.

(Sec. 35.) "Any such judgment in an action of ejectment shall be conclusive as to the right of the possession established in such action, upon the party against whom it is rendered, and against all persons claiming from, through, or under such party, by title

accruing after the commencement of such action, except as hereinafter mentioned.

The exception referred to in the above quoted section, is found in the following section, (36), and it provides simply that "If any person against whom such judgment is rendered shall be at the time of the judgment, an infant, married woman, or insane, the judgment shall be no bar to an action commenced within five years after the removal of such disability."

We summarize the points discussed in the foregoing brief into the following propositions, viz:

I.

The State court obtained jurisdiction of the controversy between Laidley and the Land Company respecting the title to, and the right of possession of, the land which was the subject matter of the suit, in November, 1882; that being the time when all the parties were brought into court, and the defendant entered its appearance and plead to said action — Record, page 151.

The first steps taken in the Federal court were November 11th, 1890,—(Record, page 636) eight years after the institution of the proceedings in the State court, and fifty-nine days after judgment had been rendered by the State court. (The stay of proceedings granted the Land Company by said State court to allow it to apply for a writ of error was sixty days.)

On the equity side of the State court, jurisdiction was taken by it in June, 1887. (Record, page 222.) This litigation was determined by the Supreme court of the State February 11th, 1889.—Record, page 335.

II.

The State court having obtained jurisdiction of the parties and the subject matter, prior to the institution of any suit or proceeding in the Circuit court of the United States, affecting the same, is entitled to hold it until the end of that controversy, free from any interference by injunction or otherwise, from the Federal court.

III.

Federal courts have no power or jurisdiction to enjoin proceedings in a State court, when the jurisdiction of the State court was first obtained over the parties and the subject matter, except in bankruptcy cases.

IV.

Actual seizure of the property is not essential to give complete jurisdiction over the subject matter, after the parties litigant are before the court, whenever the transfer of the possession thereof is necessary to give adequate effect to any judgment which may be rendered concerning the same.

We desire to emphasize the necessity of preserving the independence of the Judiciary, both State and Federal, in our dual form of government. The efficiency of every judicial tribunal is dependent upon the integrity and finality of its decrees and judgments, and if it would instil in the mind of the litigant and the public that respect which is due to the arbiter of disputes, it should set the example by respecting the judgments of other courts of equal dignity and co-ordinate powers. It should decline absolutely to entertain parties whose grievances had been adjudicated by, or were the subject matter of pending litigation in another forum. The

policy of the law is to end controversies and not to protract them interminably. The administration of law will degenerate into a farce whenever independent courts of general jurisdiction enter into an unseemly scramble over the possession of property which is the subject matter of the suit. They would become petty tyrants, fighting to maintain a questionable prerogative, and bring reproach upon the whole judiciary system. To keep the Federal and State courts separate and distinct in their respective spheres of action becomes an imperative necessity, and wherever a conflict is imminent, all questions which might arise in that conflict should be surrendered and submitted to that court acquiring original and primary jurisdiction. This has been the universal rule as laid down by this court, and we can see no reason for departing from a principle established in necessity, in this particular case.

Respectfully submitted,

W. R. THOMPSON.
W. K. COWDEN.
Z. T. VINSON.